

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James F. Holderman	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	02 C 4822	DATE	2/4/2003
CASE TITLE	USA vs. BDO SEIDMAN et al		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Opinion and Findings pursuant to USCA 7 <sup>th</sup> Circuit order of December 18, 2002. The Clerk of Court is directed to supplement the record on appeal with this Memorandum Opinion and Order and the two boxes of documents filed under seal by the Roe and Doe interveners forthwith..
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	JS <input checked="" type="checkbox"/> courtroom deputy's initials	18003 10/15/02 U.S. DISTRICT COURT 05:47 PM 5-02/03 01 02 03/03 Date/time received in central Clerk's Office	number of notices FEB 05 2003 date docketed [Signature] docketing deputy initials 2/4/2003 date mailed notice JS mailing deputy initials	Document Number 73
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**DOCKETED**  
**FEB 05 2003**

United States of America,

Petitioner,

v.

BDO Seidman, LLP, regarding IRS  
examination of BDO Seidman, LLP,

Respondent,

Appeals of:

John Doe and Jane Doe, and  
Richard Roe and Mary Roe,

Proposed Intervenors.

No. 02 C 4822

(On Limited Remand in Cases  
02-3914 and 02-3915 Pending  
in the United States Court of  
Appeals for the Seventh  
Circuit.)

MEMORANDUM OPINION AND FINDINGS

JAMES F. HOLDERMAN, District Judge:

Pursuant to the Seventh Circuit's remand order of December 18, 2002, the district court is to make further findings regarding those documents to which the proposed intervenor-appellants claim a privilege under 26 U.S.C. § 7525. This court has endeavored to do so.

LEGAL STANDARD

Section 7525 is a 1998 statute that applies "the same common law protections of confidentiality which apply to a communication between a taxpayer and an attorney" to a communication with respect to "tax advice" between a taxpayer and a "federally authorized tax practitioner," "to the extent the communication would be considered privileged communication if

it were between a taxpayer and an attorney.” 26 U.S.C. § 7525(a)(1). The statute defines “tax advice” as “advice given by an individual with respect to a matter which is within the scope of the individual’s authority to practice described in subparagraph (A).” 26 U.S.C. § 7525(a)(3)(B). Significantly, the § 7525 privilege does not apply to “any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of such corporation in any tax shelter (as defined in section 6662(d)(2)(C)(iii)).” 26 U.S.C. § 7525(b). Finally, § 7525 is applicable only to communication made on or after July 22, 1998, the statute’s enactment date. See Notes following 26 U.S.C. § 7525.

Like the attorney-client privilege, the § 7525 privilege protects against the disclosure of the content of confidential communications between a tax advisor and client. Generally, under both the attorney-client privilege and the § 7525 privilege, a client’s identity is not protected for disclosure. See In re Grand Jury Proceeding (Cherney), 898 F.2d 565, 567 (7th Cir. 1990). An exception to this general rule exists, however, where the disclosure of the client’s identity would lead ultimately to disclosure of the client’s motive for seeking the advice of an attorney or federally authorized tax practitioner, because motivation is itself a confidential communication. Id.; Tillotson v. Boughner, 350 F.2d 663, 666 (7th Cir. 1965).

In the case at hand, proposed intervenor-appellants argue that disclosure of their identities will, by necessity, disclose their motives for retaining the services of BDO Seidman, LLP (“BDO”), i.e., the proposed intervenor-appellants’ desire to engage in financial transactions which the government might later decide to be abusive tax shelters. To avoid the premature disclosure of any proposed intervenor-appellant’s identity, proposed intervenor-appellants’ counsel have assigned an

identifying number to each. Accordingly, the Does have been identified as Doe 1 through Doe 56. Likewise, the Roes have been identified as Roe 1 through Roe 42.

The government, in presenting its position seeking disclosure of the proposed intervenor-appellants' identities, argues: (1) the identity-privilege does not apply in these cases, (2) BDO was not giving "tax advice," (3) BDO, the tax advisor, had a conflict of interest, and therefore the privilege does not apply, (4) the communications were made for use in preparing the taxpayers' tax returns, (5) in some instances, the information has been disclosed to third parties and the privilege thus waived, and (6) the crime-fraud exception applies.

Before addressing the individual documents submitted post-remand for in camera review, this court believes comments regarding the government's arguments are appropriate. First, this court finds that the identity-privilege does exist under § 7525, just as it does in the attorney-client context. If such a privilege did not apply to § 7525 in the abstract, the Seventh Circuit would not have remanded this case to the district court to make further findings. Second, this court must determine, document-by-document, whether the relationship between BDO and the intervenor-appellants was for the purpose of providing "tax advice" such that the privilege enacted by the statute applies. The Seventh Circuit has made clear that "[n]othing in [§ 7525] suggests that [federally authorized tax practitioners] are entitled to privilege when they are doing other than lawyers' work . . . ." United States v. Frederick, 182 F.3d 496 (7th Cir. 1999). Further, "material transmitted to an attorney or the attorney's agent for the purpose of using that information on a tax return is not privileged." In re Grand Jury Proceedings, 220 F.3d 568, 571 (7th Cir. 2000); see also United States v. KPMG LLP, 2002 WL 31894130, at \*4 (D.D.C. 2002) ("[7525] does not protect communications between a tax practitioner and a client simply for the preparation of a tax return."). Therefore, the "tax advice"

privilege of § 7525 does not include communication regarding tax return preparation; it simply encompasses communication such as tax planning advice. Third, the cases the government cites for the proposition that a taxpayer cannot reasonably rely on the professional advice of someone he or she knows to have a conflict of interest do not negate the § 7525 privilege; rather, these cases involve situations in which taxpayers claimed an advice-of-counsel defense, not an assertion of privilege. Fourth, this court must determine, on a document-by-document basis, whether the communication was for the purpose of preparing the client's tax returns. If so, the client's identity is not privileged. Fifth, this court must determine, again on a document-by-document basis, whether intervenor-appellants have waived the § 7525 privilege. Sixth, this court cannot, and need not, at this time, determine, based on the record before it, whether the crime-fraud exception applies.

As the Seventh Circuit's December 18, 2002, Order makes clear, this court must consider the "totality of the circumstances" surrounding each document in making the determination whether the § 7525 privilege applies. In re Grand Jury Proceeding, 220 F.3d at 572. In so doing, this court will make the findings as requested by the Seventh Circuit in its December 18, 2002, Order by answering the following enumerated questions as to each document received in camera:

- (1) the purpose and history of BDO's representation of the appellants with respect to the tax shelter transaction at issue [i.e., Was the purpose of BDO's representation to provide tax advice?];
- (2) whether, in light of the purpose and history of BDO's representation as well as the description of the transactions in the IRS summonses, revealing the appellants' identities to the IRS necessarily would reveal the appellants' motive for seeking tax advice or the substance of that advice [i.e., Would revealing the appellants' identities reveal their motives for seeking tax advice?];
- (3) whether the IRS could determine that the appellants had participated in the transactions without obtaining their names from BDO [i.e., Have appellants waived the privilege?]; and

(4) whether any of the documents at issue were generated for the purpose of preparing tax returns [Was the document at issue communicated or generated for the purpose of preparing appellants' tax returns?].

Based on the discussion above, with respect to each in camera document, for the proposed intervenor-appellants' identities to be protected from disclosure by the § 7525 privilege, the answer to question (1) must be yes, to question (2) yes, to question (3) no, and to question (4) no. Any other factual determination would result in the conclusion that the § 7525 privilege does not apply. In other words, if the purpose of BDO's representation was not to provide tax advice, or if revealing the intervenor-appellants' identities would not reveal their motives to seek tax advice, or if intervenor-appellants have waived the privilege, or the documents were communicated or generated for the purpose of preparing intervenor-appellants' tax returns, the § 7525 privilege would not preclude disclosure of the intervenor-appellants' identities. In making its findings set forth below, this court, after reviewing a particular in camera document in the context of the totality of the circumstances, has placed an em dash, "—," after the number of those questions which this court cannot answer, for example, when the document does not evince a relationship between BDO and the proposed intervenor because one or both of the parties did not sign the document.

Without revealing further contents of the in camera documents, this court notes that many of the documents entitled "Confidentiality Agreement" state on the second page, paragraph number 1 that "BDO shall provide, and Recipient shall receive, Confidential information . . . for the purpose of providing the Recipient the required information to prepare . . . income tax returns." As discussed above, information communicated for the purpose of preparing tax returns is not privileged.

This court also notes that many of the documents entitled "Consulting Agreement" in either paragraph number 5, 6, or 7 state that "BDO's Services hereunder do not include . . . any legal and/or

tax opinions regarding any strategies that may be implemented, and has advised [intervenor-appellants] to retain a law firm for legal and/or tax opinions on any strategies or transactions they enter into." This provision, among others, under the heading "No Warranty," is inconsistent with certain other provisions of the "Consulting Agreement," especially some provisions set forth in the paragraph labeled "Services."

This court finds that the "No Warranty" language makes the relationship defined by the "Consulting Agreement" to be different than the common law taxpayer-attorney relationship. This court also has borne in mind, as it must, that the privilege enacted in § 7525, like the attorney-client privilege, must be construed narrowly. See United States v. Evans, 113 F.3d 1457, 1461 (7th Cir. 1997).

In making the findings set forth below document-by-document, as contemplated by the Seventh Circuit's December 18, 2002, Order, this court has cited, where appropriate, to those provisions of the particular in camera document under review. Other provisions may also bear on the issue. Indeed, this court has considered the totality of the circumstances in reaching each finding, and, as stated earlier, if this court could not definitely make a finding based on this court's in camera review of a particular document, an em dash was placed as the answer to that enumerated question.

Additionally, some of the documents submitted for in camera review state in bold and all capital letters at the bottom of each page thereof: "SUBJECT TO TAX PRACTITIONER PRIVILEGE UNDER SECTION 7525 OF THE INTERNAL REVENUE CODE." This court finds no legal significance in this language. It is the relationship between the parties under § 7525 that creates the privilege. Comments about the privilege and authorization from the client to BDO to assert the privilege as stated in the paragraph entitled "Confidentiality Privilege," which is typically

paragraph number 14 in the "Consulting Agreements" dated in the year 2001, are factors this court has considered.

**FURTHER FINDINGS AS TO EACH *IN CAMERA* DOCUMENT<sup>1</sup>**

<b>Intervenor-Appellant</b>	<b>Document</b>	<b>Bates Number</b>
<u>Doe 1</u>		
Findings:	Confidentiality Agreement (1) — (2) — (unsigned document)	3 BDO 00023555-00023557 (3) — (4) —
Findings:	Confidentiality Agreement (1) No (2) — (second page, ¶ 1)	3 BDO 00023565-00023567 (3) — (4) Yes
Findings:	Consulting Agreement (1) — (2) — (unsigned draft)	3 BDO 00023572-00023576 (3) — (4) —
Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	3 BDO 00023591-00023595 (3) — (4) No
Findings:	Confidentiality Agreement (1) No (2) — (second page, ¶ 1)	3 BDO 00023599-00023601 (3) — (4) Yes
Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	5 BDO 00010575-00010579 (3) — (4) No

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<sup>1</sup> No in camera documents were submitted for Does 18, 19, 20, 21, 33, 47, 52, 53, 54, and 55. No in camera documents were submitted for Roes 6, 8, 11, 16, 17, 18, 19, 20, 21, 24, 26, 27, 30, 31, 32, 35, 36, 40, 41, and 42.

BDO Seidman admitted that it prepared the federal income tax returns for each of the Does and Roes except Roes 12, 20, 21, and 26. As to Roes 12, 20 and 21, BDO stated that it was in the process of determining whether it prepared their federal income tax returns. As to Roe 26, no statement was made regarding federal income tax return preparation.



Doe 2

Findings:	Engagement Letter (1) — (2) — (unsigned document)	7 BDO 00016374.1255-00016374.1261 (3) — (4) —
Findings:	Engagement Letter (1) No (2) — (first page, ¶ 1)	7 BDO 00016374.1264-00016374.1269 (3) — (4) Yes
Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	7 BDO 00016374.1685-00016374.1689 (3) — (4) No
Findings:	Engagement Letter (1) No (2) — (first page)	7 BDO 00016374.1690-00016374.1692 (3) — (4) Yes
Findings:	Consulting Agreement (1) — (2) — (unsigned document)	7 BDO 00016374.1694-00016374.1698 (3) — (4) —

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Doe 3

Findings:	Engagement Letter (1) No (2) — (first page, ¶ 1)	5 BDO 00002532.26-00002532.30 (3) — (4) Yes
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Doe 4

Findings:	Consulting Agreement (1) Yes (2) Yes (first page, ¶ 2)	6 BDO 00012419.11-00012419.15 (3) — (4) No
Findings:	Consulting Agreement (1) No (2) — (first page)	6 BDO 0012419.16-00012419.18 (3) — (4) Yes
Findings:	Consulting Agreement (1) — (2) — (unsigned draft)	6 BDO 00012419.23 (3) — (4) —

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Doe 5

Findings:	Consulting Agreement (1) — (2) — (unsigned document)	7 BDO 00002175-00002181 (3) — (4) —
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Doe 6

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	3 BDO 00005694-00005700 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	4 BDO 00013438-00013444 (3) — (4) No
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Doe 7

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 5)	4 BDO 00005399-000000005402 (3) — (4) No
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Doe 8

Findings:	Consulting Agreement (1) — (2) — (unsigned document)	7 BDO 00002182-00002187 (3) — (4) —
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Doe 9

Findings:	Consulting Agreement (1) — (2) — (unsigned document)	7 BDO 00002182-00002187 (3) — (4) —
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Doe 10

Findings:	Consulting Agreement (1) — (2) — (unsigned document)	7 BDO 00002182-00002187 (3) — (4) —
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Doe 11

Findings:	Consulting Agreement (1) — (2) — (incomplete document)	BDO 00031449-00031452 (3) — (4) —
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Findings:	Consulting Agreement (1) No            (2) — (page 2, ¶ 6; page 1, ¶ 2)	6 BDO 00012419.223-00012419.227 (3) —            (4) Yes
Findings:	Consulting Agreement (1) No            (2) — (page 2, ¶ 6; page 1, ¶ 2)	6 BDO 00012419.343-00012419.347 (3) —            (4) Yes
Findings:	Consulting Agreement (1) —            (2) — (unsigned draft)	6 BDO 00012419.354-00012419.358 (3) —            (4) —
Findings:	Consulting Agreement (1) —            (2) — (unsigned document)	6 BDO 00012419.359-00012419.363 (3) —            (4) —
Findings:	Consulting Agreement (1) No            (2) — (page 2, ¶ 6; page 1, ¶ 2)	6 BDO 00012419.366-00012419.370 (3) —            (4) Yes
Findings:	Consulting Agreement (1) —            (2) — (incomplete document)	6 BDO 00012419.376 (3) —            (4) —
Findings:	Consulting Agreement (1) No            (2) — (page 2, ¶ 6; page 1, ¶ 2)	6 BDO 00012419.382-00012419.386 (3) —            (4) Yes

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Doe 12

Findings:	Confidentiality Agreement (1) —            (2) — (unsigned draft)	7 BDO 00008231-00008234 (3) —            (4) —
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Doe 13

Findings:	Confidentiality Agreement (1) —            (2) — (unsigned draft)	7 BDO 00008231-00008234 (3) —            (4) —
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Doe 14

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	7 BDO 00016374.705-00016374.709 (3) — (4) No
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Doe 15

Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	2 BDO 00006620-00006625 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	3 BDO 00019032-00019037 (3) — (4) No
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Findings:	Consulting Agreement (1) Yes (2) Yes (first page, ¶ 1)	3 BDO 00019135-00019138 (3) — (4) No
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Doe 16

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	2 BDO 00007592-00007597 (3) — (4) No
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	2 BDO 00007599-00007604 (3) — (4) —
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Doe 17

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	3 BDO 00019254-00019258 (3) — (4) No
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Doe 22

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	7 BDO 00016374.270-00016374.274 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 1)	7 BDO 00016374.4-00016374.10 (3) — (4) Yes
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Doe 23

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6) (§ 7525(b))	3 BDO 00024043-00024047 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6) (§ 7525(b))	3 BDO 00024048-00024052 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6) (7525(b))	3 BDO 00024059-00024063 (3) — (4) No
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	3 BDO 00024066-000024070 (3) — (4) —
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Doe 24

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	2 BDO 00017870-00017875 (3) — (4) No
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	2 BDO 00017886-00017891 (3) — (4) —
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	3 BDO 00021201-00021206 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	6 BDO 00003760.51-00003760.56 (3) — (4) No
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	7 BDO 00002201-00002206 (3) — (4) —
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Doe 25

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 5; page 1, ¶ 2)	4 BDO 00021400-00021404 (3) — (4) Yes
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Findings:	Engagement Letter (1) No (2) — (page 1)	7 BDO 00008311-00008320 (3) — (4) Yes
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Findings:	Consulting Agreement (1) No (2) — (page 1)	7 BDO 00008321-00008325 (3) — (4) Yes
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Doe 26

Findings:	Consulting Agreement (1) — (2) — (unsigned document)	BDO 00020000-00020005 (3) — (4) —
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Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	3 BDO 00019423-00019428 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	2 BDO 00006581-00006586 (3) — (4) No
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Doe 27

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	2 BDO 00017864-00017869 (3) — (4) No
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	2 BDO 00017892-00017897 (3) — (4) —
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	Consulting Agreement	3 BDO 00019536-00019541
Findings:	(1) No (2) —	(3) — (4) No
	(page 2, ¶ 6)	
Findings:	Consulting Agreement	7 BDO 00002207-00002212
	(1) — (2) —	(3) — (4) —
	(unsigned document)	

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Doe 28

	Consulting Agreement	BDO 00028361-00028365
Findings:	(1) No (2) —	(3) — (4) No
	(page 2, ¶ 6)	
Findings:	Consulting Agreement	BDO 00031434-00031438
	(1) No (2) —	(3) — (4) No
	(page 2, ¶ 6)	

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Doe 29

	Consulting Agreement	BDO 00028361-00028365
Findings:	(1) No (2) —	(3) — (4) No
	(page 2, ¶ 6)	
Findings:	Consulting Agreement	BDO 00031434-00031438
	(1) No (2) —	(3) — (4) No
	(page 2, ¶ 6)	

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Doe 30

	Consulting Agreement	BDO 00028361-00028365
Findings:	(1) No (2) —	(3) — (4) No
	(page 2, ¶ 6)	
Findings:	Consulting Agreement	BDO 00031434-00031438
	(1) No (2) —	(3) — (4) No
	(page 2, ¶ 6)	

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Doe 31

	Consulting Agreement	BDO 00028361-00028365
Findings:	(1) No (2) —	(3) — (4) No
	(page 2, ¶ 6)	

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	BDO 00031434-00031438 (3) — (4) No
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Doe 32

Findings:	Consulting Agreement (1) — (2) — (unsigned document)	2 BDO 00017898-00017903 (3) — (4) —
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	2 BDO 00017876-00017881 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	3 BDO 00021648-00021653 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	6 BDO 00003760.403-00003760.408 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	6 BDO 00003760.409-00003760.414 (3) — (4) No
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Doe 34

Findings:	Consulting Agreement (1) — (2) — (unsigned document)	BDO 00031439-00031443 (3) — (4) —
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 5)	3 BDO 00021732-00021736 (3) — (4) No
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	8 BDO 00002288.19-00002288.23 (3) — (4) —
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	8 BDO 00002288.37-00002288.41 (3) — (4) —
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	8 BDO 00002288.9-00002288.13 (3) — (4) —
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Doe 35

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	6 BDO 00012419.1057-00012419.1061 (3) — (4) Yes
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	6 BDO 00012419.879-00012419.883 (3) — (4) Yes
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	6 BDO 00012419.937-00012419.941 (3) — (4) —
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Findings:	Consulting Agreement (1) — (2) — (unsigned draft)	6 BDO 00012419.942-00012419.946 (3) — (4) —
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Doe 36

Findings:	Consulting Agreement (1) — (2) — (unsigned document)	3 BDO 00021799-00021803 (3) — (4) —
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	7 BDO 00010105.1241-00010105.1245 (3) — (4) —
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Findings:	Engagement Letter (1) No (2) — (first page)	7 BDO 00006608.490-00006608.496 (3) — (4) Yes
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Doe 37

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	3 BDO 00021583-00021587 (3) — (4) Yes
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Findings:	Engagement Letter (1) No      (2) — (first page)	7 BDO 00010105.1053-00010105.1059 (3) —      (4) Yes
Findings:	Engagement Letter (1) No      (2) — (first page)	7 BDO 00010105.1060-00010105.1066 (3) —      (4) Yes
Findings:	Engagement Letter (1) No      (2) — (first page)	7 BDO 00010105.988-00010105.993 (3) —      (4) Yes
Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	8 BDO 00002288.228-00002288.232 (3) —      (4) Yes
Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	8 BDO 00002288.260-00002288.264 (3) —      (4) Yes

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Doe 38

Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	BDO 00031444-00031448 (3) —      (4) No
Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	6 BDO 00012419.594-00012419.598 (3) —      (4) No
Findings:	Consulting Agreement (1) —      (2) — (unsigned document)	6 BDO 00012419.599-00012419.603 (3) —      (4) —
Findings:	Engagement Letter (1) No      (2) — (first page)	6 BDO 00012419.633-00012419.639 (3) —      (4) Yes

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Doe 39

Findings:	Consulting Agreement (1) —      (2) — (unsigned document)	8 BDO 00002288.14-00002288.18 (3) —      (4) —
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	8 BDO 00002288.24-00002288.29 (3) — (4) —
Findings:	Consulting Agreement (1) — (2) — (unsigned document)	8 BDO 00002288.31-00002288.35 (3) — (4) —

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Doe 40

Findings:	Consulting Agreement (1) No (2) — (pages 2 and 3, ¶ 6)	3 BDO 00017722-00017726 (3) — (4) No
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Doe 41

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	3 BDO 00017703-00017707 (3) — (4) No
Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	3 BDO 00017716-00017720 (3) — (4) No
Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	4 BDO 00026586-00026590 (3) — (4) No
Findings:	Engagement Letter (1) No (2) — (first page)	5 BDO 00002532.1982-00002532.1989 (3) — (4) Yes
Findings:	Engagement Letter (1) No (2) — (first page)	5 BDO 00002532.648-00002532.653 (3) — (4) Yes
Findings:	Consulting Agreement (1) — (2) — (unsigned document)	8 BDO 00002288.266-00002288.270 (3) — (4) —

Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	10 BDO 00001160.375-00001160.379 (3) —      (4) No
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Doe 42

Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 5)	BDO 00018480-00018486 (3) —      (4) No
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Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	BDO 00018487-00018496 (3) —      (4) No
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Findings:	Consulting Agreement (1) No      (2) — (page 3, ¶ 6)	BDO 00018497-00018506 (3) —      (4) No
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Findings:	Consulting Agreement (1) No      (2) — (page 3, ¶ 6)	4 BDO 00023494-00023503 (3) —      (4) No
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Findings:	Consulting Agreement (1) No      (2) — (page 3, ¶ 6)	4 BDO 00023926-00023935 (3) —      (4) No
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Doe 43

Findings:	Consulting Agreement (1) No      (2) — (page 3, ¶ 6)	BDO 00018507-00018516 (3) —      (4) No
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Doe 44

Findings:	Consulting Agreement (1) No      (2) — (page 3, ¶ 6)	BDO 00018517-00018526 (3) —      (4) No
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Findings:	Consulting Agreement (1) No      (2) — (page 3, ¶ 6)	4 BDO 00024788-00024797 (3) —      (4) No
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Doe 45

Findings:	Consulting Agreements (1) — (2) — (incomplete document)	4 BDO 00002293 (3) — (4) —
Findings:	Consulting Agreements (1) — (2) — (unsigned document)	4 BDO 00002295-00002301 (3) — (4) —

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Doe 46

Findings:	Engagement Letter (1) No (2) — (first page)	BDO 00035725-00035733 (3) — (4) No
Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	2 BDO 00018108-00018113 (3) — (4) No
Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6; seventh page)	3 BDO 00020608-00020614 (3) — (4) Yes

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Doe 48

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	2 BDO 00017976-00017981 (3) — (4) No
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Doe 49

Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	2 BDO 00017906-00017911 (3) — (4) No
Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	3 BDO 00022136-00022141 (3) — (4) No

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Doe 50

Findings:	Consulting Agreement (1) Yes      (2) Yes (first page, § 2)	6 BDO 00012419.34-00012419.38 (3) —      (4) No
Findings:	Engagement Letter (1) No      (2) — (first page)	6 BDO 00012419.40-00012419.42 (3) —      (4) Yes

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Doe 51

Findings:	Confidentiality Agreement (1) —      (2) — (unsigned draft)	7 BDO 00008231-00008234 (3) —      (4) —
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Doe 56

Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	2 BDO 00004563-00004567 (3) —      (4) No
Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	2 BDO 00004614-00004619 (3) —      (4) No
Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	3 BDO 00017918-00017923 (3) —      (4) No

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Roe 1

Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6) (§ 7525(b))	3 BDO 00006108-00006112 (3) —      (4) No
Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6) (§ 7525(b))	3 BDO 00006114-00006118 (3) —      (4) No

Findings:	Consulting Agreement (1) — (2) — (unsigned document)	5 BDO 00000627-00000645 (3) — (4) —
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Roe 2

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6) (§ 7525(b))	4 BDO 00026029-00026036 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 7) (§ 7525(b))	7 BDO 00005765-00005769 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6) (§ 7525(b))	7 BDO 00005770-00005777 (3) — (4) No
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Roe 3

Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	2 BDO 00001099-00001108 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 5)	2 BDO 00001164-00001170 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	2 BDO 00001171-00001180 (3) — (4) No
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	3 BDO 00000001-00000009 (3) — (4) —
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	3 BDO 00000012-00000020 (3) — (4) —
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Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	3 BDO 00000819-00000828 (3) — (4) No
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Findings:	Consulting Agreement (1) No            (2) — (page 3, ¶ 6) (§ 7525(b))	3 BDO 00000829-00000835 (3) —            (4) No
Findings:	Consulting Agreement (1) No            (2) — (page 3, ¶ 6) (§ 7525(b))	3 BDO 00022057-00022063 (3) —            (4) No
Findings:	Consulting Agreement (1) No            (2) — (page 3, ¶ 6) (§ 7525(b))	4 BDO 00020036-00020045 (3) —            (4) No

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Roe 4

Findings:	Consulting Agreement (1) No            (2) — (page 3, ¶ 6)	2 BDO 00000551-00000560 (3) —            (4) No
Findings:	Consulting Agreement (1) No            (2) — (page 3, ¶ 6)	2 BDO 00001191-00001200 (3) —            (4) No
Findings:	Consulting Agreement (1) —            (2) — (unsigned document)	3 BDO 00000011-00000029 (3) —            (4) —
Findings:	Consulting Agreement (1) No            (2) — (page 3, ¶ 6)	3 BDO 00000799-00000808 (3) —            (4) No
Findings:	Consulting Agreement (1) No            (2) — (page 3, ¶ 6)	3 BDO 00005348-00005357 (3) —            (4) No
Findings:	Consulting Agreement (1) No            (2) — (page 3, ¶ 6)	4 BDO 00020046-00020055 (3) —            (4) No

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Roe 5

Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	2 BDO 00001181-00001190 (3) — (4) No
Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	2 BDO 00001920-00001929 (3) — (4) No
Findings:	Consulting Agreement (1) — (2) — (unsigned document)	3 BDO 00000010 (3) — (4) —
Findings:	Consulting Agreement (1) — (2) — (unsigned document)	3 BDO 00000782-00000790 (3) — (4) —
Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	3 BDO 00000809-00000818 (3) — (4) No
Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	4 BDO 00020056-00020065 (3) — (4) No
Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	6 BDO 00009342-00009351 (3) — (4) No

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Roe 7

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	2 BDO 00017145-00017150 (3) — (4) No
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Roe 9

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	4 BDO 00000482-00000486 (3) — (4) No
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	4 BDO 00000496-00000500 (3) — (4) —
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Findings:	Consulting Agreement (1) — (2) — (unsigned document)	4 BDO 00000510-00000513 (3) — (4) —
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Roe 10

Findings:	Consulting Agreement (1) — (2) — (unsigned document)	4 BDO 00000516-00000519 (3) — (4) —
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Roe 12

Findings:	Consulting Agreement (1) — (2) — (unsigned document)	4 BDO 00002776-00002782 (3) — (4) —
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Roe 13

Findings:	Retainer Agreement (1) No (2) — (page 2, ¶ 5) (§ 7525(b))	2 BDO 00006293-00006304 (3) — (4) No
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Findings:	Confidentiality Agreement (1) Yes (2) Yes (first page)	2 BDO 00006305-00006307 (3) — (4) No
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Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	2 BDO 00006341-00006346 (3) — (4) No
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Findings:	Retainer Agreement (1) — (2) — (unsigned document)	2 BDO 00006347-00006353 (3) — (4) —
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Findings:	Consulting Agreement (1) No (2) — (page 3, ¶ 6)	2 BDO 00006355-00006361 (3) — (4) No
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Findings:	Retainer Agreement (1) No            (2) — (page 2, ¶ 5)	3 BDO 00022079-00022084 (3) —            (4) No
Findings:	Consulting Agreement (1) No            (2) — (page 3, ¶ 6)	4 BDO 00015236-00015242 (3) —            (4) No

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Roe 14

Findings:	Confidentiality Agreement (1) —            (2) — (unsigned document)	2 BDO 00006286-00006288 (3) —            (4) —
Findings:	Consulting Agreement (1) —            (2) — (unsigned document)	2 BDO 00006309-00006315 (3) —            (4) —
Findings:	Retainer Agreement (1) —            (2) — (unsigned document)	2 BDO 00006316-00006321 (3) —            (4) —
Findings:	Retainer Agreement (1) No            (2) — (page 2, ¶ 5)	3 BDO 00022085-00022090 (3) —            (4) No
Findings:	Consulting Agreement (1) No            (2) — (page 3, ¶ 6)	4 BDO 00015773-00015786 (3) —            (4) No

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Roe 15

Findings:	Engagement Letter (1) Yes*        (2) Yes (first page) (§ 7525(b))	4 BDO 00005152-00005155 (3) —            (4) No
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\* This court, in considering the totality of the circumstances and services provided, finds that one of the purposes of BDO's representation was to provide tax advice.

Findings:	Engagement Letter (1) Yes*      (2) Yes (first page) (§ 7525(b))	4 BDO 00005159-00005162 (3) —      (4) No
	* This court, in considering the totality of the circumstances and services provided, finds that one of the purposes of BDO's representation was to provide tax advice.	
Findings:	Engagement Letter (1) —      (2) — (unsigned document)	4 BDO 00005182-00005185 (3) —      (4) —
Findings:	Engagement Letter (1) Yes*      (2) Yes (first page) (§ 7525(b))	8 BDO 00003296-00003299 (3) —      (4) No
	* This court, in considering the totality of the circumstances and services provided, finds that one of the purposes of BDO's representation was to provide tax advice.	

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Roe 22

Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	3 BDO 00022260-00022264 (3) —      (4) No
Findings:	Agreement to Terminate (1) Yes      (2) Yes (first page)	3 BDO 00022279-00022282 (3) —      (4) No
Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	10 BDO 00001002-00001006 (3) —      (4) No

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Roe 23

Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	3 BDO 00005905-00005911 (3) —      (4) No
Findings:	Retainer Agreement (1) Yes      (2) Yes (page 1)	3 BDO 00005912-00005917 (3) —      (4) No

Findings:	Retainer Agreement (1) Yes      (2) Yes (page 1)	4 BDO 00012353-00012358 (3) —      (4) No
Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	4 BDO 00012414-00012420 (3) —      (4) No

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Roe 25

Findings:	Consulting Agreement (1) No      (2) — (page 2, ¶ 6)	4 BDO 00013119-00013125 (3) —      (4) No
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Roe 28

Findings:	Consulting Agreement (1) No      (2) — (page 3, ¶ 6)	BDO 00019492 (3) —      (4) No
Findings:	Consulting Agreement (1) No      (2) — (page 3, ¶ 6)	BDO 00019535 (3) —      (4) No
Findings:	Consulting Agreement (1) No      (2) — (page 3, ¶ 6)	7 BDO 00015835-00015840 (3) —      (4) No

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Roe 29

Findings:	Consulting Agreement (1) —      (2) — (unsigned document)	BDO 00034519-00034528 (3) —      (4) —
Findings:	Retainer Agreement (1) —      (2) — (unsigned document)	BDO 00034529-00034534 (3) —      (4) —
Findings:	Engagement Letter (1) —      (2) — (unsigned document)	BDO 00034535-00034540 (3) —      (4) —

Findings:	Confidentiality Agreement (1) — (2) — (unsigned document)	5 BDO 00006520-00006523 (3) — (4) —
Findings:	Consulting Agreement (1) — (2) — (unsigned document)	5 BDO 00006524-00006530 (3) — (4) —
Findings:	Consulting Agreement (1) — (2) — (unsigned draft)	5 BDO 00006531-00006537 (3) — (4) —
Findings:	Consulting Agreement (1) — (2) — (unsigned document)	5 BDO 00006538-00006544 (3) — (4) —
Findings:	Engagement Letter (1) — (2) — (unsigned document)	5 BDO 00006703-00006709 (3) — (4) —

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Roe 33

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	6 BDO 00010923-00010927 (3) — (4) No
Findings:	Consulting Agreement (1) — (2) — (unsigned document)	6 BDO 00010929-00010933 (3) — (4) —
Findings:	Consulting Agreement (1) — (2) — (unsigned document)	6 BDO 00010936-00010940 (3) — (4) —
Findings:	Engagement Letter (1) No (2) — (first page, §§ 1 and 2)	6 BDO 00010976-00010982 (3) — (4) Yes

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Roe 34

Findings:	Consulting Agreement (1) No (2) — (page 2, ¶ 6)	2 BDO 00004568-00004573 (3) — (4) No
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Findings:	Consulting Agreement	2 BDO 00005118-00005123
	(1) No (2) —	(3) — (4) No
	(page 2, ¶ 6)	

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Roe 37

Findings:	Consulting Agreement	4 BDO 00026090-00026096
	(1) No (2) —	(3) — (4) No
	(page 2, ¶ 6)	

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Roe 38

Findings:	Consulting Agreement	4 BDO 00025306-00025312
	(1) No (2) —	(3) — (4) No
	(page 2, ¶ 6)	

Findings:	Consulting Agreement	6 BDO 00009596-00009602
	(1) No (2) —	(3) — (4) No
	(page 2, ¶ 6)	

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Roe 39

Findings:	Consulting Agreement	4 BDO 00013891-00013897
	(1) No (2) —	(3) — (4) No
	(page 2, ¶ 6)	

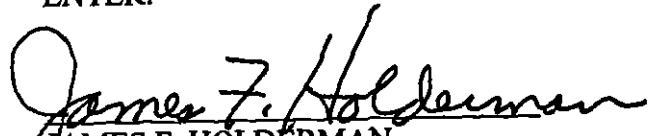
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CONCLUSION

The findings made herein have been made document-by-document based upon the totality of the circumstances as to each of the documents identified above which were submitted for in camera review with regard to the issues raised by the appeals of the proposed intervenors in the cases numbered 02-3914 and 02-3915 in the United States Court of Appeals for the Seventh Circuit.

The documents reviewed in camera by this court are ordered transmitted to the United States Court of Appeals for the Seventh Circuit under seal for review if desired by that Court on appeal.

ENTER:

  
JAMES F. HOLDERMAN  
United States District Judge

DATE: February 4, 2003